Filed 2/6/03 In re Earl P. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re EARL P., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. EARL P., Defendant and Appellant.	A097496 (Alameda County Super. Ct. No. J141405)

Earl P. (Earl) appeals from the juvenile court dispositional order placing him on probation for a misdemeanor battery (Pen. Code, § 243.6). He claims that the court failed to comply with the requirements of Welfare and Institutions Code section 241.1[1] and substantial evidence did not support the finding that he committed a misdemeanor battery. We are unpersuaded by his arguments and uphold the lower court's ruling.

BACKGROUND

On October 30, 2001, Security Officer Ivy Williams (Williams) was on duty at Castlemont High School in Oakland. A substitute teacher requested assistance with a disruptive class, and Williams responded and assisted in roll call. Earl, who had been in the classroom, left through a window.

[1] All further unspecified code sections refer to the Welfare and Institutions Code.

After determining five people should not have been in the classroom, Williams attempted to take them to the school office. One student, Jasmine W., would not listen to Williams, and Williams called for backup. Security Officer Willie Weaver (Weaver) and another security officer arrived. Jasmine yelled profanity; Weaver and Williams then attempted to handcuff her. A struggle ensued; Earl ran into the room; he threw a pencil at Weaver, striking him; Earl then ran away.

Weaver and Williams continued to struggle with Jasmine when Earl reentered the room. He picked up a 14-inch diameter metal garbage can, approached Weaver from behind, and threw the garbage can at him. The garbage can struck Weaver in the back of his neck and shoulder area. Earl fled the classroom, laughing. Weaver sought medical treatment for his neck and back injuries.

According to Earl, the following occurred. He testified that he was in the classroom when Williams arrived. Since he was not enrolled in the class, he left. He stated that he left through the door. A short time later, he passed by the classroom and heard Jasmine yelling to be let go and to be left alone. He watched the struggle between Jasmine and the security officers, observing Weaver twist Jasmine's arm behind her back and pin her into a corner. He stated that Jasmine was yelling and crying. To assist Jasmine, he threw the garbage can at Weaver and then fled. He admitted knowing that Weaver and Williams were security guards for the school, and he stated that they both were dressed in security uniforms when struggling with Jasmine. He also knew that Jasmine was not enrolled in the class and that she was disobeying the directive of the security officers to leave.

On November 1, 2001, the District Attorney of Alameda County filed an information alleging that Earl came within the provisions of section 602, having committed misdemeanor battery on a school employee (Pen. Code, § 243.6), misdemeanor resisting, delaying or obstructing a police officer (*id.,* § 148, subd. (a)), and misdemeanor disruption on school grounds (*id.,* § 626.8).

Since Earl had been removed from the home of his parents and declared a dependent of the court under section 300, the child welfare and probation departments

filed on November 7, 2001, a report pursuant to section 241.1. The report stated that "Deputy probation Officer Dana Meredith and Child Welfare Worker Sandra Black met and conferred on November 5, 2001. Said conferences were by phone." At the time of this report, Earl's biological mother was incarcerated in state prison and his biological father has a history of substance abuse and an extensive arrest and conviction record of drug-related offenses. It further stated: "The Deputy Probation Officer and Child Welfare Worker agree that the best result for this minor would be to have him adjudged as a probation ward." The report was signed by both the child welfare worker and the deputy probation officer and their respective supervisors.

On December 3, 2001, following a jurisdictional hearing on the section 602 petition on November 30, the juvenile court found true the allegation of misdemeanor battery, and dismissed the allegations in the other two counts. On December 14, 2001, the probation department filed a dispositional report. It stated that Earl's biological mother became pregnant at age 12 and was using drugs. Earl ingested cocaine and bronchial medication when he was 26 months old while his mother was in a semi-passed-out state in a dirty home. The mother has had a long history of incarcerations and pregnancies. The biological father has had a long history of arrests and convictions. Earl has lived in a number of different homes with relatives and foster parents. He also has lived in a number of group homes where his behavior has created serious problems. The report noted that Earl had been referred to the probation department three times, including this incident. It stated that he "needs to be placed in a structured environment that will address his issues of anger, abandonment, loss and special education." Among other things, it recommended that Earl "be declared a ward of the Court and be committed to the care, custody and control of the Probation Officer with the minor to be removed from the home of his guardians, Alameda County Social Services, and placed in a suitable family home or group home under the standard out-of-home probation conditions. . . ."

On December 17, 2001, the court dismissed Earl's status as a dependent and declared him a ward of the court under section 602. The court referred Earl to the

probation office for placement in a suitable family home or group home and placed him on probation for a period not to exceed one year.

Earl filed a timely notice of appeal.

DISCUSSION

A. *Compliance with Section 241.1*

Earl contends that a section 241.1 report was required in this case and, although one was prepared, it was untimely and inadequate. Preliminarily, we note that he never objected in the juvenile court to the report on either basis. Although no published opinion has directly addressed waiver and section 241.1 reports, numerous courts have applied the waiver rule in instances where there has been a failure to object to the adequacy of, or lack of, various assessment reports in juvenile proceedings. (See *In re Dakota S.* (2000) 85 Cal.App.4th 494, 502 [waived on appeal failure to obtain assessment report required by section 366.26, subd. (b)]; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339 [waived on appeal failure to request bonding study]; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 411-412 [waived on appeal failure to object to adequacy of assessment].) We see no reason why the waiver rule should not apply here, especially since compliance with section 241.1 is not jurisdictional. However, we do not need to reach this issue because we conclude the report was both timely and adequate.

Section 241.1 provides, in pertinent part: "(a) Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child protective services department shall, pursuant to a jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. . . .

"(b) The probation department and the child protective services department in each county shall jointly develop a written protocol to ensure appropriate local coordination in the assessment of a minor described in subdivision (a), and the

development of recommendations by these departments for consideration by the juvenile court. These protocols shall require, which requirements shall not be limited to, consideration of the nature of the referral, the age of the minor, the prior record of the minor's parents for child abuse, the prior record of the minor for out-of-control or delinquent behavior, the parents' cooperation with the minor's school, the minor's functioning at school, the nature of the minor's home environment, and the records of other agencies which have been involved with the minor and his or her family. The protocols also shall contain provisions for resolution of disagreements between the probation and child protective services departments regarding the need for dependency or ward status and provisions for determining the circumstances under which a new petition should be filed to change the minor's status. [¶] . . . [¶]

"(d) Nothing in this section shall be construed to authorize the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court."

Earl appeared to qualify as both a dependent under section 300 and, since a section 602 petition had been filed, a ward of the juvenile court, although he could not be declared both simultaneously (§ 241.1). Accordingly, the requirements of section 241.1 had to be followed.

Earl does not claim that a section 241.1 report was not filed, nor does he maintain that the filed report did not consider the factors set forth in subdivision (b) of this statute. Rather, he complains that the statute was violated because the report was filed on November 7, 2001, six days after the filing of the probation report. He claims that the following language in subdivision (a) of section 241.1 requires the report and section 602 petition to be filed simultaneously: "The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. . . ."

When construing a statute, our first task "is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual,

ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. . . . The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (*Dyna-Med., Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387.) " 'Rules of statutory construction require courts to construe a statute to promote its purpose, render it reasonable, and avoid absurd consequences.' " (*Ford v. Gouin* (1992) 3 Cal.4th 339, 348.)

Earl appears to be arguing that the petition and report must be filed at the exact same time; once they are not filed simultaneously, there can be no way to cure this procedural defect. Earl provides no explanation as to how his construction would further the statute's purpose and, not surprisingly, he cites no authority to support this absurd construction.

The plain language of the statute does not require that the section 241.1 report be filed at the exact same time the petition is filed. More significantly, Earl's proposed construction would frustrate the entire purpose of the statute. A petition is generally filed within a day or two of the charged offense; requiring the section 241.1 report to be filed at the exact same time with such short notice would probably result in an inadequate and incomplete report. It would be extremely difficult, if often not impossible, to garner and then set forth in the report in such a short period of time all the facts required by section 241.1. Further, the purpose of the statute is to ensure that the court receives both the petition and the report prior to rendering its decision so that it can assess the appropriate status for the child. (See *In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1013.) Thus, as long as the report is filed in sufficient time for the court to consider its content, it satisfies the purpose of the statute. Here, the court received the petition on November 1 and the section 241.1 report on November 7; both were received well before the jurisdictional hearing on November 30, 2001.

Earl's second argument is that the report was inadequate. He claims the record does not establish that the court considered the recommendations of both the probation

and welfare department as required under section 241.1, subdivision (a). He claims that the section 241.1 report did not contain the required recommendations of both the probation and welfare department. Further, he argues that the probation report appears to concur that he should be a ward of the court, but this does not constitute a recommendation of the welfare department. He asserts that the situation here is the same as that in *In re Marcus G., supra,* 73 Cal.App.4th 1008, and the *Marcus* court reversed the delinquency ruling since there was no evidence that the required joint recommendation from the welfare and probation departments had been presented to the delinquency court. (*Id.* at p. 1017.)

This argument, too, is wholly without merit. The section 241.1 report expressly states that the deputy probation officer and the child welfare worker conferred on November 5, 2001, and that both the "Deputy Probation Officer and Child Welfare Worker agree that the best result for this minor would be to have him adjudged as a probation ward." Further, the report is signed by the child welfare worker, the deputy probation officer, and both of their supervisors. The probation officer reiterated her agreement with this disposition in the dispositional report filed on December 14, 2001.

Earl's reliance on *In re Marcus G., supra,* 73 Cal.App.4th 1008 is misplaced. The *Marcus* court noted that the assessment and determination of the appropriate status for the minor is to be made in the delinquency, not the dependency, proceeding. (*Id.* at p. 1013.) Yet the reviewing court did not have the record in the delinquency proceeding and it therefore had no information on whether there had been compliance with section 241.1. (*In re Marcus G.*, *supra,* at pp. 1013-1014.) Moreover, even if it assumed the juvenile court could determine the issue of dual jurisdiction, the juvenile court did not receive a joint assessment by the probation and welfare departments as required by section 241.1. (*In re Marcus G.*, *supra,* at p. 1014.) The court therefore remanded the matter to the juvenile court with directions to determine whether the procedures set forth in section 241.1 were followed and, if not, to direct the probation and welfare departments to comply with the procedures of section 241.1. (*In re Marcus G.*, *supra,* at p. 1017.)

Here, in contrast, a section 241.1 report prepared and signed by both the child welfare worker and the probation officer appears in the record. Thus, the individual circumstances unique to Earl's case had been assessed in accordance with the statutory mandate of section 241.1.

B. *Substantial Evidence*

Earl also argues that insufficient evidence supports the finding that he violated Penal Code section 243.6. In reviewing jurisdictional findings, we look to see if substantial evidence, contradicted or uncontradicted, supports them. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733.) In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are for the lower court's determination. (*Ibid*.)

Penal Code section 243.6 provides: "When a battery is committed against a school employee engaged in the performance of his or her duties, or in retaliation for an act performed in the course of his or her duties, whether on or off campus, during the schoolday or at any other time, and the person committing the offense knows or reasonably should know that the victim is a school employee, the battery is punishable by imprisonment in a county jail not exceeding one year . . . . However, if an injury is inflicted on the victim, the battery shall be punishable by imprisonment in a county jail for not more than one year . . . . [¶] For purposes of this section, 'school employee' has the same meaning as defined in subdivision (d) of Section 245.5."

Penal Code section 245.5, subdivision (d) defines "school employee" as "any person employed as a permanent or probationary certificated or classified employee of a school district on a part-time or full-time basis, including a substitute teacher. . . . 'School employee,' as used in this section, also includes a student teacher, or a school board member. . . ."

The statute requires that the victim be a school employee as defined by Penal Code section 245.5, subdivision (d) and that the person committing the battery knows or reasonably should have known that the victim is a school employee. Here, the court

found that Weaver was an Oakland School District security officer and that Earl knew he was a school employee. Earl, however, argues that substantial evidence does not support either of these elements.

Earl acknowledges that Weaver testified that he was a school security officer at Castlemont High School for the Oakland Unified School District. However, he argues, the record contains no evidence as to whether he was either a classified or certificated employee of the school district.

Education Code section 44006 defines "certificated person" as a "person who holds one or more documents such as a certificate, a credential, or a life diploma, which singly or in combination license the holder to engage in the school service designated in the document or documents." Section 41401, subdivision (b) of this same code defines "classified employee" as "an employee of a school district, employed in a position not requiring certification qualifications." Weaver's testimony that he was a school security officer was sufficient to establish that he was a classified employee of a school district.

As to his knowledge that Weaver was a school employee, Earl admits that he testified that he knew Weaver was a security guard for the school. However, he maintains "there was no other line of questioning to establish that [he] knew or should have known that Mr. Weaver was a school employee as defined by the Penal Code section . . . ."

It is difficult to understand exactly what Earl is arguing. He testified that he knew that Weaver was a security guard for the school and that Weaver was wearing a security guard uniform when he hurled the garbage can at him. Thus, the record clearly supports the ruling that he knew Weaver was an employee of the school district.

DISPOSITION

The judgment is affirmed.

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Lambden, J.

We concur:

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Kline, P.J.

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Haerle, J.